

SC 2005 Workshop – Facilities & Infrastructure

General Legal Issues

GC-77

- Alternative financing arrangement –
 - Contractor-initiated proposal
 - Contractor would obtain the use of real property other than through traditional line-item funding.

- Alternative financing proposals require special scrutiny to ensure that they comply with applicable laws and regulations, including OMB guidance.

Leases

- For an alternative financing arrangement where a lease between a DOE contractor and a third-party will be used, DOE must determine whether the lease is an operating lease or a capital lease under OMB Circular A-11, Appendix B.

OMB A-11 – Operating Lease Criteria

- OMB Circular A-11 specifies six criteria that must be met for a lease to be scored as an operating lease rather than a capital lease.

OMB A-11

Operating Lease v. Capital Lease

- 1) Ownership of the asset.
- 2) Bargain-price option.
- 3) Lease term.
- 4) Lease price.
- 5) General purpose v. Special government purpose.
- 6) Private sector market.

OMB A-11 – Operating Lease

- Budget authority is required for the first year of the contract in the amount necessary to cover the reasonable and allowable costs of the first year of the lease, plus termination costs.
- The contractor or third-party, not DOE, should bear the entrepreneurial risks of entering into the lease.

OMB A-11 – Capital Lease

- Budget authority is required for the full cost of all the payments.
- Budgetary authority must be obtained up front.